

STRATA MANAGEMENT IN PENINSULAR MALAYSIA: AN OVERVIEW

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ABSTRACT

Strata properties law in Malaysia came into existence in 1985 and was governed by the Strata Titles Act 1985 ("STA"). To date, the Act has gone through various amendments. Nevertheless, it appears that the Act has failed to address the disputes arising from strata management and maintenance. The problem arises when parcel owners tend to look after their own private unit but neglect the common property which belongs to everybody. Consequently, landscaped areas become unattended, stairways become filthy and the building lack of proper maintenance. This paper discusses various amendments made; from the first amendment of the STA in 1990, second amendment in 1996, third amendment in 2001, the amendments in 2007 **as well the latest amendment in 2013**. The objective of this paper is to see whether the amendments to the existing legislations, including the Strata Management Act 2013 are sufficient enough to address the problems encountering the management of strata building in Malaysia. As such this paper will analyse some of the provisions in Building and Common Property (Maintenance and Management) Act 2007 ("BCPA") and proposed Strata Management Act 2013. The research method used in writing up this paper is the qualitative research in which it analyses the relevant statutes, rules, regulations, books, journals, articles, thesis, seminar papers, electronic materials and various newspaper reports. The findings of the research suggest that irrespective of the newly introduced Strata Management Act 2013 there is a need for more legal improvements in order to create a better regulatory framework for strata management in Malaysia.

I. INTRODUCTION

Broadly speaking, strata building comprises a building which is subdivided into parcels which includes accessory parcel and provisional block (if any) and everything else shall be deemed as common property (eg. corridors, lifts, external wall, open space, water tanks etc.). In Malaysia, any person who purchases a parcel in a strata building development enters into a three-fold legal relationship; firstly, he is the individual owner of his parcel; secondly, he is a co-owner with all other owners of the common property and the land of the multi storey building development. Thirdly, he is automatically a member of the parcel owners' body to whom the management and maintenance of the multi storey building is entrusted.³ As such, each parcel owner shall only be responsible for the maintenance and repair of his parcel including any accessory parcel. With regards the common property, it is the shared responsibility of all parcel owners to maintain it.⁴ Hence, there is a need for a medium to facilitate the proper control and maintenance of the said common property by the developer or the Management Corporation

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³ Building and Common Property (Maintenance & Management) Act 2007 (Act 633) – Highlights (Part II) by National House Buyers Association published in Iproperty Magazine, 1st December 2007, p.3.

⁴ Mohd Helmi Md. Hussain, (1992) . Strata Titles. Seminar on Malaysian Land Laws and the Latest Amendments to the National Land Code, Kuala Lumpur, p.17.

“MC”⁵. However, there are common problems encountered within strata buildings which include physical defects of the properties; limited access or no direct control by the property managers over the management fund since the accounts are kept either by the developer or the MC; refusal by parcel owners to pay the maintenance fee as the developer did not rectify defects or did not provide facilities as promised; refusal by property owners to pay the maintenance fee because their units cannot be rented out; non-payment of the maintenance fees by some developers for the unsold units although they have to; poor quality of management and maintenance services; as well as other legal and social problems.⁶ The objective of this paper is to see whether the amendments to the existing legislations, including the Strata Management Act 2013 are sufficient enough to address the problems encountering the management of strata building in Malaysia.

II. MANAGEMENT OF STRATA BUILDING - THE STRATA TITLES ACT 1985 (“STA”)

The STA sets out the framework which forms the machinery for the ownership of parcels of airspace and ownership. It also outlines the upkeep of the shared facilities known as the common property. Section 4 of STA defines “common property” as so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan. The MC⁷ which consists of all parcel owners of the strata properties which is set up as required under the STA. The main duty of the MC is to manage and upkeep the common property and any property vested in it in a state of good and serviceable repair.

a) Legal Improvement to the STA

The STA was amended for the first time in 1990 and this was subsequently gazetted as Act A753, which came into force on the 23rd February 1993. The amendments⁸ amongst others imposed additional functions on the MC⁹. In essence, it created more stringent limitations on the power of the MC on the maintenance fund¹⁰ and also common property¹¹. This amendment further clarified some doubts on the definition of the ‘proprietor’ in the STA¹². In that context, it also empowers the MC, in the event of default by the parcel owner, to apply to the Land Administrator for the issuance of warrant of attachment. The purpose of the said warrant is to

⁵ The management corporation is a separate legal entity which is made up of all the proprietors of individual parcels/lots in the strata scheme, and which like a company, has perpetual succession, a common seal and may hold property, sued and be sued in its own right as stated in Section 39(2)(3) of STA 1985.

⁶ Tiun Ling Ta & Lim Yoke Mui, “Factors contributed to problems in managing high-rise residential building in Malaysia” pp35/10/2007 The Surveyor Journal p.1.

⁷ Section 4 of the STA.

⁸ Leong Hoong Wah. (1990), Management of Subdivided Buildings (Incorporating the 1989 amendments), Seminar Pindaan-pindaan Terbaharu Kanun Tanah Negara 1965 dan Akta Hakmilik Strata 1985, Kuala Lumpur 19th March 1990.

⁹ inserted paragraph 5(e) of the Third Schedule, without delay enter in the strata roll any intended change or any other dealing notified to it pursuant to subparagraph (g) of paragraph (1) of by-law 2.

¹⁰ Amended section 45(2), to invest any moneys in the Maintenance Fund, but only in such investments or in such manner as may be approved at the general meeting. Prior to the amendment, the MC may invest any moneys in the Maintenance Fund as it thinks fit.

¹¹ deleted section 47(1)(d) which empowers the MC to dispose of part of the common property to create a new parcel and substituting section 42(2)(ii) with a provision to expressly disallowing the MC to transfer any part of the common property which forms part of the building or of the land on which the building stands.

¹² the definition of ‘proprietor’ has been amended to expressly state that it refers to a proprietor of a parcel and a proprietor of a provisional block.

legally authorize the attachment of any movable property belonging to the parcel owner¹³. In addition, it emancipates the validity of the AGM of the MC notwithstanding the fact that it was held out of the fifteen (15) month period¹⁴. Nevertheless, the Act provides that a penalty is to be imposed on the failure to comply with the said time requirement¹⁵.

Unfortunately, after the first set of amendments, there were further problems encountered by MC relating to the management of the multi storey buildings. This resulted in the second set of amendments to the STA which was passed by the Parliament on 10th June 1996, which was subsequently gazetted as Act A951. In connection with the second set of amendments, it is to be noted that the original definition of “unanimous resolution” is quite stringent. The original definition requires those who are entitled to vote either personally or by proxy, to agree to the motion at the duly convened meeting. However, the new amendment¹⁶ has somewhat “relaxed” the provision relating to the need for a unanimous resolution. For that reason, after the said amendment, the requirement now is that at least twenty one (21) days notice is required for any proposed resolution. Hence, during a duly convened general meeting of the MC, any resolution may be passed and no vote is required to be casted.

In respect of “special resolutions”, the original definition requires at least $\frac{3}{4}$ of the parcel owners holding at least $\frac{3}{4}$ of the aggregate share units to give notice of the proposed resolution. In addition, the proposed resolution requires at least fourteen (14) days notice prior to a general meeting, before the said resolution may be passed in the meeting. However, the new definition after the amendment¹⁷, requires at least $\frac{1}{4}$ of the parcel owners holding at least $\frac{1}{4}$ of the aggregate share units to give notice of any proposed resolution. The said notice needs to be given at least fourteen (14) days before a general meeting, before any resolution may be passed at the meeting.¹⁸ This amendment has eased some of the difficulties faced because there is now a lesser quorum required to pass a resolution.

Thereafter, the STA was subsequently amended in 2001 which came into force on the 1st December 2001 and this was gazetted as Act A1107. This amendment helped streamline the areas of ineffectiveness of the STA and was intended to resolve disputes with regards to the smooth running of the MC. The most outstanding provision under this amendment is the setting up of the Strata Titles Board.¹⁹ Further to that, in order to ensure the continuous positive performance of the MC, new provisions have been inserted²⁰. Numerous sections and

¹³ section 53A has been inserted which corresponds to section 367A of the NLC which has since been repealed under the Fourth Schedule of the NLC. Nevertheless it continues to apply to MC established under the NLC by virtue of section 82(3) of the NLC.

¹⁴ insertion of second proviso, paragraph 8(2) of the Second Schedule, that the holding of any annual general meeting out of time in breach of the fifteen month period shall not affect the validity of the annual general meeting.

¹⁵ section 81(3) on MC should take note that the Strata Titles Rules may prescribe a penalty of a fine not exceeding one thousand ringgit for failure to comply with any of those requirements.

¹⁶ It amended the definition of “unanimous resolution” to facilitate the management of the multi storey building .

¹⁷ It deleted paragraph 18 of the Second Schedule as the definition of “special resolution” is now introduced into Section 4 pertaining to the interpretation.

¹⁸ Cheah Gaik Lian, “Strata Titles Amendments: An Overview”, *Seminar On Malaysian Land Laws, Kuala Lumpur, 1st August 1996*, p.7-8.

¹⁹ Dr. Azimuddin Bahari. (2001). Latest Amendments of the Strata Titles Act 1985. National Convention on Strata Titles 2001, Melaka, 5&6 November 2001.pp 4 states that the provisions pertaining to the establishment of the board are under Sections 67A to 67X . With the establishment of the board, disputes between parcel owners and MC can be resolved without going to the courts and to that effect it will greatly reduce the burden of the courts.

²⁰ Several new sub-sections have been inserted section 53A :- a. sub-section 2A, if the MC encounters difficulties in executing the warrant, it may seek the assistance of a police officer not below the rank of inspector; b. sub-section 3A, any tenant, sub-tenant or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the MC by the parcel owner, pays such sum may thereafter, in the absence of any written

sub-section are being inserted and substituted to in order to provide more protection on the interest of the parcel owners²¹.

Subsequently, the STA was amended again and made effective in 2007. It came into force on the 12th April 2007 and was gazetted as Act A1290. These amendments modified, deleted and substituted the provisions of the STA to improve numerous issues with regards to the administration before and after the strata titles are issued. The purposes of the amendments²² made were to overcome problems and challenges faced, to improve the functions of MC and to eliminate shortcomings in the existing provisions.²³ The most fundamental part to these set of amendments was the introduction of the Building and Common Property (Maintenance and Management) Act 2007 (“BCPA”). To that end, under the BCPA, the roles of the developer, parcel owners and MC are more clearly defined. It also introduced three (3) new bodies in order to implement proper building maintenance, namely the JMB, the COB and managing agent.²⁴ (Please add a background to 2013 amendment as well)

III. MANAGEMENT OF STRATA BUILDING - THE BUILDING AND COMMON PROPERTY (MAINTENANCE AND MANAGEMENT) ACT 2007 (“BCPA”)

The BCPA was enacted to provide for the proper upkeep of the common property in all the strata properties. Section 2 of BCPA defines “common property” as in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the structural elements of the building, stairways, fire escapes, entrances and exits, corridors, lobbies, fixtures and fittings, lifts, refuse chutes, refuse bins, compounds, drains, water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational areas, driveways, car parks and parking areas, open spaces, landscapes areas, walls and fences and all other facilities and

agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the parcel owners, and may retain possession until such amount has been fully reimbursed to him whether by deduction from the rent or otherwise; c. sub-section 3B, the receipt issued by the MC for any amount so paid by any such tenant, sub-tenant or occupier shall be deemed an acquittance in full for the like amount of rent and further to that a new section 55A has been inserted where any proprietor has failed to pay the contribution demanded by the MC in the manner set out in section 53, the proprietor shall be guilty of an offence and shall be liable on conviction pay a fine of not more than RM5,000.00 and an additional fine of not more than RM50.00 for each day the offence continues to be committed.

²¹ i. in section 41 of the STA, sub-section (ba) was inserted under (b) which states, ‘to determine the portion of contribution to the MF to be paid into the special account to be maintained under section 46’; ii. a new section 41A was inserted to protect the interest of parcel owners who are a minority where the first annual general meeting of a MC in respect of a multi storey building has not been convened. The owner of each of the parcels or provisional blocks, if any, in the sub-divided building shall, commencing from the opening of the book of the strata register in respect of the multi storey building, pay to the MC any such sum which has been approved by the Director as the amount payable for the maintenance of the multi storey building and the common property and such sum shall be deemed to be the amount determined by the MC as the contributions payable by the parcel owners to the management fund of the MC; iii. the original section 50 is being substituted by the new section 50 whereby the Director has the authority to appoint Managing Agents. In the substitution, the Director may, upon complaints by a proprietor or any other person or body having a registered interest in a parcel that the MC has not functioned satisfactorily. Further, if the Director is satisfied that it is in the interests of the parcel owners in the multi storey building concerned is going to be effected, then the Director may appoint a managing agent to exercise the powers and discharge the duties and functions of the MC.

²² As discussed in great length by I.M.Shukri ,Ainul Jaria Maidin. (2010). Malaysian Strata Titles Law and Procedure. pp 44-62. Sweet & Maxwell Asia

²³ I.M.Shukri ,Ainul Jaria Maidin. (2010). Malaysian Strata Titles Law and Procedure. pp 5,10,44. Sweet & Maxwell Asia

²⁴ “Act comes under scrutiny”, The Star 30th July 2007 Monday http://www.biz.the_star.com.my, Building and Common Property (Maintenance & Management) Act 2007 (Act 633) – Highlights (Part I) by National House Buyers Association published in Iproperty Magazine, 15th November 2007 p. 1

installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building. This definition is more wholesome and complete.

The importance of the BCPA is to fill in the vacuum in the management of strata properties prior to the issuance of the strata title. The JMB²⁵ consists of the developer and all the parcel owners of the strata properties which were established under the BCPA. Upon the establishment of the JMB, the developer is now required to bring parcel owners on board in the decision-making process. Consequently, this will lighten suspicions between the developer and the parcel owners and stimulate a positive relationship which is vital for the successful management of the multi storey building.²⁶ However, it is pertinent to note that there are still many uncertainties in the existing BCPA. This is due to the fact that there is lack of a comprehensive and extensive laws being outlined in the BCPA. Hence, it leads to the on-going problems and challenges faced in strata management.

IV. MANAGEMENT OF STRATA BUILDING - STRATA MANAGEMENT ACT 2013 ~~BILL 2012~~

The main objective of the Strata Management Act 2013 was to govern the maintenance and management of buildings and common property of multi storey buildings and subdivided lands into a single legislation. The Bill went through its third reading in Parliament on 27th of September 2012 and went through three years of vigorous and stringent drafting in order to safeguard the interests and rights of the parcel owners. Its sole interest and main objective is to protect parcel owners on the proper maintenance and management of the building and common property free from unscrupulous developers and illegal property managers. The Strata Management Bill, once passed would replace the existing BCPA.

The amendment of the Strata Titles Act 1985 (Act 118) and the introduction of the Strata Management Act 2013 aim to curb delay in the issuance of strata titles to the parcels and for the purposes of application for the approval of the Director of Lands and Mines for the State or the Federal Territory for the subdivision of building and land before the building or land parcels are completed. For this purpose the original proprietors of an alienated land are required to:-

- (a) apply for the certificate of proposed strata plan to the Director of Survey within three (3) months from the date of issuance of the document that certifies the super structure stage (applicable to the case where the sale and purchase agreement of any parcel that takes place and the document that certifies the super structure stage is issued after the commencement of the Strata Titles (Amendment) Act 2013); and
- (b) apply for subdivision of building or land within one (1) month from the date of issuance of the certificate of proposed strata plan.

Secondly, when the Strata Management Act 2013 is enforced, it is allowed to have a two-tier management corporation, namely a main management corporation to maintain and manage common property enjoyed by all parcel owners and a subsidiary management corporation to maintain and manage the limited common property that is exclusively enjoyed by the limited parcels owners. The two-tier management corporation is ideal for mixed development projects so that common property which is exclusively enjoyed by limited parcels owners are maintained by only those parcels owners.

²⁵ Section 4 of the BCPA.

²⁶ Teo Keang Sood, Teo Keang Sood, *Strata Title in Singapore and Malaysia*, 4th Edition, LexisNexis, 2012, p. 102

Thirdly, for new projects that are approved after the implementation of the Strata Titles (Amendment) Act 2013 and the Strata Management Act 2013, strata titles to the parcels will be issued upon purchasers taking vacant possession of the parcels. Therefore, there is no need to establish the JMB. A developer would be responsible to manage and maintain the common property for the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one (1) month after the first annual general meeting of the management corporation (“preliminary management period”), and the developer shall, not later than the date of the expiry of the preliminary management period hand over control of records, balances of moneys in the maintenance account and in the sinking fund account and all assets of the management corporation to the management committee of the management corporation. Lastly, Strata Management Tribunal (“Tribunal”) is set up to address strata management disputes, such as claims for recovery of charges or contribution to the sinking fund by the property managers.

The Strata Management Tribunal is put under the purview of the Ministry Well Being, Housing and Local Government would hear claims fairly and impartially as each party is given reasonable opportunity to present his case. Further, members of the Tribunal are comprised of members of the judicial and legal service or persons who are admitted as advocates and solicitors under the Legal Profession Act 1976, who are of not less than 7 years standing. The Tribunal proceedings also provide for friendly sittings as parties would not be represented by any advocate and solicitor at the hearings, unless in the opinion of the Tribunal the matter in question involves complex issues of law or if one party may suffer severe financial hardship if he is not represented by any advocate and solicitor.

V. CONCLUSION

In view of the above discussions, it may be safely said that there is a constant need to address the changing needs to manage the multi storey buildings. Although there were four (4) fundamental amendments which have been successfully promulgated, it appears that there is still a constant need to continuously address the issue of the management of the multi storey buildings. Notwithstanding the fact that the new 2012 outlines the respective duties of the developer, JMB and MC; there still appears to be further areas for improvement. Be that as it may, the new Strata Management Act has helped all the stakeholders since it has clarified certain gaps and uncertainties created in the BCPA.

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